

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CIXXFIVE CONCEPTS, LLC,
Plaintiff,
v.
GETTY IMAGES, INC., et al.,
Defendants

Case No. C19-386-RSL

**ORDER GRANTING
DEFENDANTS' MOTIONS
TO COMPEL ARBITRATION**

This matter comes before the Court on (1) defendant Getty Images (US), Inc.’s “Renewed Motion to Compel Arbitration, Dismiss Class Claims and Stay Proceedings” (Dkt. #43), and (2) defendants Getty Images, Inc.’s and License Compliance Services, Inc.’s “Renewed Motion to Compel Arbitration, Dismiss Class Claims and Stay Proceedings” (Dkt. #44). Having reviewed the memoranda, declarations, and exhibits submitted by the parties,¹ the Court finds as follows:

I. BACKGROUND

Plaintiff CixxFive Concepts, LLC, a Texas-based digital media marketing company, brings this putative class action against defendants Getty Images, Inc., Getty Images (US), Inc. (“Getty Images US”), and License Compliance Services Inc. (“LCS”). See Dkt. #37 (First Am. Compl.) (hereinafter “FAC”). Getty Images is a Seattle-based global licensor of photographs and other digital content. See FAC ¶¶ 19-20; Dkt. #43 at 9. Defendant Getty Images, Inc. is the

¹ The Court finds this matter suitable for disposition without oral argument.

1 parent company of defendant Getty Images US. FAC ¶¶ 11-12; Dkt. #43 at 7. Getty Images,
 2 Inc. also owns defendant License Compliance Services (“LCS”). FAC ¶ 14. Plaintiff alleges
 3 that LCS conducts enforcement activities for Getty Images. FAC ¶¶ 46, 49. According to
 4 defendants, LCS ceased business operations in 2017. See Dkt. #45 (Wilsdon Decl., Ex. A
 5 (Cameron Decl.) at ¶ 2).

6 Getty Images US utilizes rights-managed licensing, selling licenses for one-time use of a
 7 photograph (“editorial rights licensing”) or as part of an annual subscription licensing agreement
 8 (“subscription licensing”). See FAC at ¶¶ 22-28, 35, 57; Dkt. #43 at 10. In June 2017, plaintiff
 9 entered into a Premium Access Agreement with Getty Images US, and accordingly became a
 10 subscription licensing customer. Id. at ¶¶ 56, 65. The Premium Access subscription allowed
 11 plaintiff to download a certain number of photographs for a flat monthly fee. Dkt. #47
 12 (Wojtczak Decl. at ¶ 7). On May 25, 2018, plaintiff purchased a license for one-time use of a
 13 photograph, which it alleges was in the public domain. FAC at ¶¶ 66-68. Because the photo
 14 (hereinafter “the Highsmith License”) was not available to plaintiff within its Premium Access
 15 subscription, plaintiff had to pay a fee to separately purchase the license. Wojtczak Decl. at ¶ 8.

16 Plaintiff brought this action against defendants on behalf of itself and all others similarly
 17 situated, alleging that defendants unlawfully license images that are in the public domain. See
 18 generally FAC at ¶¶ 1-10. Plaintiff alleges (1) violations of the Racketeering Influenced and
 19 Corrupt Organizations Practices (“RICO”) Act, see 18 U.S.C. § 1962, (2) unjust enrichment, (3)
 20 breach of contract, and (4) violations of the Washington Consumer Protection Act (“WCPA”),
 21 see RCW §§ 19.86.010, *et seq.*, and seeks declaratory judgment and injunctive relief under 28
 22 U.S.C. §§ 2201, 2202. See FAC at 17-26 (Counts I-VI). Defendants move to compel
 23 arbitration of plaintiff’s claims on an individual basis. Dkts. #43, #44.

24 **II. AGREEMENT TO ARBITRATE**

25 Pursuant to the Federal Arbitration Act (“FAA”), a written agreement to arbitrate a
 26 dispute “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or
 27 in equity for the revocation of any contract.” 9 U.S.C. § 2. “[A]rbitration is a matter of
 28 contract” and “arbitrators derive their authority to resolve disputes only because the parties have

1 agreed in advance to submit such grievances to arbitration.” AT&T Techs., Inc. v. Commc’ns
 2 Workers, 475 U.S. 643, 648-49 (1986) (citations omitted). Before a matter will be forced to
 3 arbitration, the Court must determine (a) whether a valid agreement to arbitrate exists, and (b)
 4 whether the particular dispute falls within the scope of the agreement. United Steelworkers v.
 5 Warrior & Gulf Nav. Co., 363 U.S. 574, 582-83 (1960). The FAA embodies a federal policy
 6 favoring arbitration, and it is well established “that where the contract contains an arbitration
 7 clause, there is a presumption of arbitrability[.]” AT&T Techs., 475 U.S. at 650. Moreover, “as
 8 a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved
 9 in favor of arbitration.” Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1131 (9th
 10 Cir. 2000) (quoting Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25
 11 (1983)).

12 a. Content License Agreement

13 Defendants assert that the May 25, 2018 transaction was subject to the March 2017 Getty
 14 Images Content License Agreement (hereinafter “Content License Agreement”).² See Dkt. #46
 15 (Charley Decl. at ¶¶ 11-12, Ex. A); Wojczak Decl. at ¶¶ 18-21. Section 10.d of the Content
 16 License Agreement provides:

17 Governing Law/Arbitration. This agreement will be governed by the laws
 18 of the State of New York, U.S.A., without reference to its laws relating to
 19 conflicts of law. Any disputes arising from or related to this agreement
 20 shall be finally settled by binding, confidential arbitration by a single
 21 arbitrator selected using the rules and procedures for arbitrator selection
 22 under the JAMS’ Expedited Procedures in its Comprehensive Arbitration
 23 Rules and Procedures (“JAMS”) if you are in North America, or of the
 24 International Centre for Dispute Resolution (“ICDR”) or JAMS if you are
 25 outside of North America (the applicable rules to be at your discretion), in
 26 effect on the date of the commencement of arbitration to be held in one of
 27 the following jurisdictions (whichever is closest to you): New York, New
 28 York; London, England; Paris, France; Munich, Germany; Madrid, Spain;
 Milan, Italy; Sydney, Australia; Tokyo, Japan; or Singapore. The
 arbitration proceedings shall be conducted in English and all documentation
 shall be presented and filed in English. The decision of the arbitrator shall
 be final and binding on the parties, and judgment may be entered on the

² Defendants also refer to this agreement as the “2017 EULA.”

1 arbitration award and enforced by any court of competent jurisdiction. The
2 United Nations Convention on Contracts for the International Sale of
3 Goods does not govern this agreement. The prevailing party shall be
4 entitled to recover its reasonable legal costs relating to that aspect of its
5 claim or defense on which it prevails, and any opposing costs awards shall
6 be offset. Notwithstanding the foregoing, Getty Images shall have the right
7 to commence and prosecute any legal or equitable action or proceeding
8 before any court of competent jurisdiction to obtain injunctive or other
9 relief against you in the event that, in the opinion of Getty Images, such
action is necessary or desirable to protect its intellectual property rights.
The parties agree that, notwithstanding any otherwise applicable statute(s)
of limitation, any arbitration proceeding shall be commenced within two
years of the acts, events or occurrences giving rise to the claim.

10 Charley Decl., Ex. A at § 10.d.

11 Plaintiff acknowledges the existence of the arbitration provision in the Content License
12 Agreement, but asserts that it cannot be used to compel arbitration because the Content License
13 Agreement as a whole is unsupported by consideration and is therefore invalid. See Dkt. #50 at
14 7-11. Plaintiff's challenge to the validity of the Content License Agreement as a whole is
15 improperly before the Court and must be made to the arbitrator. See Buckeye Check Cashing,
16 Inc. v. Cardega, 546 U.S. 440, 449 (2006); Rent-A-Center, W., Inc. v. Jackson, 561 U.S. 63, 71
17 (2010). While the Court must consider a challenge to the validity of the arbitration agreement
18 *itself* prior to ordering arbitration, agreements to arbitrate are severable. See Rent-A-Center, 561
19 U.S. at 71 ("[W]e nonetheless require the basis of the challenge to be directed specifically to the
20 agreement to arbitrate before the court will intervene."). "In other words, if the plaintiff does
21 not specifically and directly challenge the 'precise agreement to arbitrate at issue,' a court must
22 treat the arbitration agreement as valid under [9 U.S.C. § 2] and enforce it, thereby letting the
23 arbitrator decide questions as to the validity of other provisions in the first instance." Tompkins
24 v. 23andMe, Inc., 840 F.3d 1016, 1032 (9th Cir. 2016) (citation omitted); see also Diversified
25 Roofing Corp. v. Pulte Home Corp., Nos. CV12-1880 PHX DGC, CV12-2177 PHX DGC, 2012
26 WL 6628962, at *4-5 (D. Ariz. Dec. 19, 2012) ("Because [plaintiff's] lack of consideration
27 claim goes to the validity of the Agreement and not to the validity of the arbitration provision,
28 the Court cannot consider it.").

1 In addition, plaintiff raises a lack of assent challenge to the Content License Agreement.
 2 See Dkt. #50 at 12-14. The Court construes this as a challenge to the validity of the arbitration
 3 agreement itself, which it must resolve before ordering compliance with that agreement under
 4 § 4 of the FAA. Rent-A-Center, 561 U.S. at 71. Pursuant to the arbitration provision in the
 5 Content License Agreement, the parties must manifest mutual assent to form a contract under
 6 New York law. See Charley Decl., Ex. A at § 10.d.

7 Defendants have submitted evidence that plaintiff would have had to agree to the terms of
 8 the Content License Agreement to complete the May 25, 2018 purchase of the Highsmith
 9 License. See Wojczak Decl. at ¶ 10; Dkt. #54 (Harrison Decl., Exs. A-D).³ Because plaintiff
 10 had reasonable notice that the transaction was subject to the terms of the Content License
 11 Agreement, the Court finds that plaintiff assented to the arbitration agreement when it continued
 12 with the May 25, 2018 transaction. See, e.g., O'Callaghan v. Uber Corp. of Cal., No. 17 Civ.
 13 2094 (ER), 2018 WL 3302179, at *6-7 (S.D.N.Y. July 5, 2018). Accordingly, the Court rejects
 14 plaintiff's lack of assent challenge,⁴ and concludes that the Section 10.d of the Content License
 15 Agreement constitutes a valid agreement to arbitrate.

16 The Court must next consider whether plaintiff's claims fall within the scope of the
 17 agreement. See United Steelworkers, 363 U.S. at 582-83. Any doubts concerning the scope of
 18 arbitrable issues should be resolved in favor of arbitration. See Chiron Corp., 207 F.3d at 1131.
 19

20 ³ Plaintiff moves to strike the Declaration of Brendan Harrison (Dkt. #54), which provides
 21 additional detail regarding the transaction process and contains several cropped images from Getty
 22 Images US' "checkout" process. See Dkt. #56. The Court declines to strike the declaration and
 23 exhibits. The information, including the screenshots from Getty's website, are relevant as offered to
 24 prove plaintiff had sufficient notice of the Content License Agreement. "Although the court may not
 25 consider evidence outside the pleadings unless incorporated by reference or judicially noticed in the
 26 context of a motion to dismiss under Federal Rule of Civil Procedure 12, the court must consider
 27 evidence of the existence of an arbitration agreement in the context of a motion to compel arbitration."
Harbers v. Eddie Bauer, LLC, No. C19-1012JLR, 2019 WL 6130822, at *5 (W.D. Wash. Nov. 19,
 28 2019) (citing Chiron Corp., 207 F.3d at 1130). The Court accepts Mr. Harrison's declaration as
 adequate authentication of the exhibits from Getty Images US' "checkout process" and will consider the
 declaration and attached exhibits at this stage. Id.

⁴ Because the Court finds sufficient evidence that plaintiff assented to the Content License
 Agreement, plaintiff's request for jurisdictional discovery on the issue is denied. See Dkt. #50 at 14.

1 The arbitration agreement in the Content License Agreement is broad and far reaching. It
 2 indicates that: “Any disputes arising from or related to this agreement shall be finally settled by
 3 binding, confidential arbitration[.]” Charley Decl., Ex. A at § 10.d. The Ninth Circuit construes
 4 arbitration clauses that include phrases like “relat[ed] to” broadly. See, e.g., Mediterranean
5 Enters., Inc. v. Ssanyong Corp., 708 F.2d 1458, 1464 (9th Cir. 1983) (indicating that “relating
 6 to” language in an arbitration provision extends beyond disputes relating to interpretation and
 7 performance of the contract itself).

8 Count III of plaintiff’s FAC alleges breach of contract and clearly falls within the scope
 9 of the arbitration provision in the Content License Agreement. The Court further finds that
 10 Count I, alleging RICO Act violations, falls within the scope of the arbitration agreement. Cf.
Van Ness Townhouses v. Mar Indus. Corp., 862 F.2d 754, 759 (9th Cir. 1988) (finding RICO
 12 claims “arbitrable as controversies ‘arising out of or relating to’ [plaintiff’s] accounts with
 13 defendant”). Counts II and IV allege state law claims for unjust enrichment and violations of
 14 the Washington Consumer Protection Act (“WCPA”), which the Court finds relate to the
 15 agreement and fall under the broad language of the arbitration clause. See, e.g., James Hardie
Bldg. Prods. Inc. v. Good Inc., No. C13-05247-RBL, 2013 WL 3814667, at *3-4 (W.D. Wash.
 17 July 22, 2013) (finding state law and WCPA claims to be “related to” service agreements and
 18 compelling arbitration of those claims under similarly broad arbitration clause). Finally, Counts
 19 V and VI, seeking declaratory judgment and injunctive relief under 28 U.S.C. § 2201, 2202
 20 related to Getty Images’ photo licenses fall within the scope of the arbitration agreement. See,
21 e.g., Alaska Protein Recovery, LLC v. Puretek Corp., No. C13-1429, 2014 WL 2011235, at *4-5
 22 (W.D. Wash. May 16, 2014) (finding declaratory judgment claims arbitrable where requests
 23 “ar[o]se out of or relate[d] to” agreement). The Court finds each of plaintiff’s six claims is
 24 arbitrable under the broad arbitration clause set forth in Section 10.d of the Content License
 25 Agreement.

26 **b. Premium Access Agreement**

27 Although plaintiff does not dispute that its claims arise out of its May 25, 2018 purchase
 28 of the Highsmith License, after attempting to disclaim the Content License Agreement

1 governing that transaction, it alleges that the earlier Premium Access Agreement⁵ between the
 2 parties governs the arbitrability of its claims, and asserts that it may “opt-out” of arbitration
 3 under that contract. While plaintiff makes general assertions about the impacts of Getty Images
 4 US’ subscription model, its concrete allegations regarding the sale of images allegedly in the
 5 public domain arise from the May 25, 2018 Highsmith License transaction. See FAC at ¶¶ 66-
 6 71; see also, e.g. id. at ¶ 9 (“All licensees who have paid Getty and/or Getty US a licensing fee
 7 for a public domain image should recover all damages available at law and equity.”). Plaintiff
 8 does not dispute this, but instead attempts to bring its claims within the Premium Access
 9 Agreement by alleging that it, rather than the Content License Agreement, governs the May 25,
 10 2018 transaction. See Dkt. #50 at 14-17.

11 In support of this argument, plaintiff relies on the “Entirety Clause” in Section 12.10 of
 12 the Premium Access Agreement. Id. That clause provides,

13 Entire Agreement. This Agreement is intended for business customers of
 14 Getty Images and contains all the terms of the license agreement. No terms
 15 or conditions may be added or deleted unless made in writing and either
 16 accepted in writing by an authorized representative of both parties or issued
 17 electronically by Getty Images and accepted in writing by an authorized
 18 representative of Licensee. In the event of any inconsistency between the
 19 terms contained herein and the terms contained on any purchase order or
 20 other communication sent by Licensee, the terms of this Agreement shall
 21 govern.
See Dkt. #50-3 (Atkins Decl., Ex. 1B at § 12.10).

22 The Court is not persuaded by plaintiff’s contention that the Entirety Clause renders the
 23 terms of the subsequent Content License Agreement invalid. See Dkt. #50 at 14-17. As
 24 defendants point out, the plain language of the Entirety Clause prohibits licensees from
 25 unilaterally imposing conflicting contract terms. Dkt. #52 at 10. Here, plaintiff is the licensee,
 26 and its misleading assertion that it unilaterally “sent” the Content License Agreement to Getty
 27 Images US when it initiated the separate Highsmith License transaction contravenes the facts of
 28 the case. Plaintiff provides no convincing authority for the interpretation that it advances, and

⁵ Defendants also refer to this earlier agreement as the “2016 EULA.”

1 the Court is aware of none. The Court has concluded that plaintiff assented to the terms of the
 2 Content License Agreement during the May 25, 2018 transaction, and the Court agrees with
 3 defendants that the Content License Agreement contains a separate, valid arbitration agreement
 4 between the parties. Dkt. #52 at 10. Moreover, the Court has found that arbitration agreement
 5 enforceable and has concluded that plaintiff's claims fall within its scope.⁶ Finally, even if
 6 plaintiff had convincingly identified some ambiguity as to the arbitrability of its claims,
 7 controlling federal law instructs that "any doubts concerning the scope of arbitrable issues
 8 should be resolved in favor of arbitration[.]" Chiron Corp., 207 F.3d at 1131. The Court will
 9 compel arbitration of plaintiff's claims under the enforceable arbitration agreement in the
 10 Content License Agreement.

III. PLAINTIFF'S CLAIMS AGAINST GETTY IMAGES, INC. AND LCS

12 Defendants Getty Images, Inc. and LCS move separately in support of Getty Images US'
 13 Motion to Compel Arbitration. See Dkt. #44. Although Getty Images, Inc. and LCS are not
 14 parties to the Content License Agreement, they seek to enforce the arbitration agreement
 15 contained therein. "The United States Supreme Court has held that a litigant who is not a party
 16 to an arbitration agreement may invoke arbitration under the FAA if the relevant state contract
 17 law allows the litigant to enforce the agreement." Kramer v. Toyota Motor Corp., 705 F.3d
 18 1122, 1128 (9th Cir. 2013) (citing Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 632 (2009)).
 19 "Among these principles are 1) incorporation by reference; 2) assumption; 3) agency; 4) veil-
 20 piercing/alter ego; and 5) estoppel." Comer v. Micor, Inc., 436 F.3d 1098, 1101 (9th Cir. 2006)
 21 (internal quotation marks and citation omitted). New York law applies pursuant to the
 22 arbitration clause in the Content License Agreement. See Charley Decl., Ex. A at § 10.d; Dkts.
 23

24 ⁶ As a last-ditch effort, plaintiff asserts that the Premium Access Agreement governs the parties'
 25 entire business relationship and accordingly trumps the language in the Content License Agreement.
 26 Dkt. #50 at 16-17. Plaintiff's bare assertions about the parties "business relationship" are futile given
 27 that plaintiff's claims stem from its separate purchase of the Highsmith License, a transaction that was
 28 governed by the Content License Agreement. Plaintiff has not met its burden to explain why the Court
 should conclude otherwise, and the Court is unwilling to do so. See Green Tree Fin. Corp.-Ala. V.
Randolph, 531 U.S. 79, 91 (2000) ("[T]he party resisting arbitration bears the burden of proving that the
 claims at issue are unsuitable for arbitration.").

1 #44 at 8, #50 at 5-6, 8; see also, e.g., Lagrone v. Adv. Call Ctr. Techs., LLC, No. C13-2136JLR,
 2 2014 WL 4966738, at *4 (W.D. Wash. Oct. 2, 2014).

3 Plaintiff concedes that, as the parent company of Getty Images US, Getty Images, Inc.
 4 can utilize an enforceable arbitration agreement between Getty Images US and plaintiff to
 5 compel arbitration of plaintiff's claims. See Dkt. #51 at 2 n.3; see also Vitzethum v. Dominick
& Dominick, Nos. 94 Civ. 4938(AGS), 95 Civ. 429(AGS), 1996 WL 19062, at *7 (S.D.N.Y.
 7 Jan. 18, 1996) ("[W]hen the charges against a parent company and its subsidiary are based on
 8 the same facts and are inherently inseparable, a court may refer claims against the parent to
 9 arbitration even though the parent is not formally a party to the arbitration agreement." (citation
 10 omitted)). Because the Court has found an enforceable agreement to arbitrate between plaintiff
 11 and Getty Images US, Getty Images, Inc. can enforce the agreement to compel arbitration of
 12 plaintiff's claims.

13 On the other hand, plaintiff argues that LCS cannot enforce the arbitration agreement on
 14 grounds that (1) it is not a "disclosed" agent of Getty Images US, and (2) its liability does not
 15 arise out of the same alleged misconduct giving rise to Getty Images US' liability. See Dkt. #51
 16 at 5-8. The Court declines to consider these arguments because it finds plaintiff lacks standing
 17 to bring its claims against LCS. See Bernhardt v. Cty. of Los Angeles, 279 F.3d 862, 868
 18 (2002) ("[F]ederal courts are required *sua sponte* to examine jurisdictional issues such as
 19 standing." (citations omitted) (alteration in original)).

20 To establish Article III standing, plaintiff must demonstrate that (1) it suffered an injury
 21 in fact, (2) there is a causal connection between the injury and the defendants' conduct, and (3)
 22 the injury will likely be redressed by a favorable decision from the Court. See Lujan v. Defs. Of
Wildlife, 504 U.S. 555, 560-61 (1992). A named plaintiff representing a class "must allege and
 23 show that they personally have been injured, not that injury has been suffered by other,
 24 unidentified members of the class to which they belong and which they purport to represent."
 25 Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 40 n.20 (1976) (citation omitted). An injury
 26 in fact is "an invasion of a legally protected interest which is (a) concrete and particularized, and
 27 (b) actual or imminent, not conjectural or hypothetical." Lujan, 504 U.S. at 560 (citations and
 28 ORDER GRANTING DEFENDANTS' MOTIONS TO COMPEL ARBITRATION - 9

1 internal quotation marks omitted). Plaintiff's allegations state that "LCS is believed to have
 2 conducted these enforcement activities on behalf of Getty [Images, Inc.] and/or Getty [Images]
 3 US, and on behalf of third party owners of image libraries." FAC at ¶ 49. Plaintiff's conclusory
 4 allegations indicate that LCS took these actions against other entities, but not against plaintiff.
 5 See, e.g., id. at ¶ 50 ("LCS has sent letters to businesses accusing them of infringing copyrights
 6 in public domain images."). In its sole concrete allegation against LCS, plaintiff asserts that
 7 LCS took unlawful enforcement action by sending a letter to photographer Carol Highsmith, a
 8 non-party to this case. Id. at ¶ 51, Ex. A; see also Simon, 426 U.S. at 40 n.20. Plaintiff fails to
 9 show that it has suffered any injury in fact or asserted any injury that is fairly traceable to the
 10 actions of LCS. Lujan, 504 U.S. at 560-61. Accordingly, plaintiff lacks standing to bring its
 11 claims against LCS. Those claims are dismissed for lack of jurisdiction. Id.

IV. AVAILABILITY OF CLASS ARBITRATION

Having concluded that plaintiff's claims against defendants Getty Images US and Getty Images, Inc. are subject to arbitration, the Court must determine whether class arbitration is available, or whether plaintiff must proceed to arbitration with its individual claims. Absent clear and unmistakable language in the arbitration agreement to the contrary, the availability of class arbitration is a gateway issue of arbitrability for the Court to decide. See, e.g., Eshagh v. Terminix Int'l Co., 588 Fed. App'x 703, 704 (9th Cir. 2014).⁷ And while the parties may delegate the gateway issue of availability of class arbitration to the arbitrator, here there is no "clear and unmistakable evidence" in the arbitration agreement evincing such intent. See First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995) (alterations omitted) (quoting AT&T Techs., 475 U.S. at 649). Accordingly, the Court must resolve this gateway arbitrability issue prior to compelling arbitration of plaintiff's claims.

⁷ While the Supreme Court has yet to address whether the availability of class arbitration is a gateway question of arbitrability for the Court to decide, see Lamps Plus v. Varela, 139 S. Ct. 1407, 1417 n.4 (2019), each circuit court that has addressed the issue, and district courts within the Ninth Circuit, have concluded that "class arbitrability is a gateway issue for courts, not arbitrators, to decide, absent clear and unmistakable language to the contrary." Cervantes v. Voortman Cookies Ltd., No. 3:19-cv-00700-H-BGS, 2019 WL 3413419, at *6-7 (S.D. Cal. July 29, 2019) (collecting cases) (quoting 20/20 Commc'nns, Inc. v. Crawford, 930 F.3d 715, 718 (5th Cir. 2019)) (additional citations omitted).

1 Defendants assert that the Content License Agreement between the parties “contemplates
 2 arbitration of plaintiff’s individual claims and nothing more.” See Dkt. #43 at 23. The Court
 3 agrees that this result is compelled under the Supreme Court’s decision in Lamps Plus v. Varela,
 4 139 S. Ct. at 1419 (“Courts may not infer from an ambiguous agreement that parties have
 5 consented to arbitrate on a classwide basis. The doctrine of *contra proferentem* cannot
 6 substitute for the requisite affirmative ‘contractual basis for concluding that the part[ies] agreed
 7 to [class arbitration].” (quoting Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp., 559 U.S. 662,
 8 684 (2010)) (emphasis and alterations in original)).

9 There is no evidence in the arbitration agreement indicating that the parties agreed to
 10 class arbitration. See Charley Decl., Ex. A at § 10.d. Moreover, plaintiff does not argue that
 11 such evidence exists. Instead, it fails to respond to defendants’ argument that it may not
 12 arbitrate on a classwide basis. See LCR 7(b)(2) (indicating that the Court may consider an
 13 opponent’s failure to respond as an admission that the motion has merit). Pursuant to the
 14 arbitration agreement between the parties, the Court compels arbitration of plaintiff’s claims
 15 against Getty Images US and Getty Images, Inc. on an individual basis and dismisses plaintiff’s
 16 class claims.

17 **V. DISMISSAL OF PROCEEDINGS**

18 As a final matter, the Court “may either stay the action or dismiss it outright when, as
 19 here, the court determines that all of the claims raised in the action are subject to arbitration.”
 20 Johnmohammadi v. Bloomingdale’s, Inc., 755 F.3d 1072, 1074 (9th Cir. 2014). The Court finds
 21 that arbitration is the proper forum for all of plaintiff’s viable claims. Moreover, plaintiff has
 22 not asked the Court to stay the proceedings. Therefore, the Court dismisses plaintiff’s remaining
 23 claims pursuant to Federal Rule of Civil Procedure 12(b)(3) in favor of arbitration, and without
 24 prejudice.

25 **VI. CONCLUSION**

26 For all the foregoing reasons, defendants’ Motions to Compel Arbitration, Dismiss Class
 27 Claims and Stay Proceedings (see Dkts. #43, #44) are GRANTED.
 28

1 IT IS HEREBY ORDERED that plaintiff's claims against LCS are DISMISSED without
2 prejudice for lack of jurisdiction.

3 IT IS FURTHER ORDERED that plaintiff's putative class claims against defendants are
4 DISMISSED and plaintiff shall proceed to arbitrate its claims on an individual basis.

5 IT IS FURTHER ORDERED that this matter is DISMISSED without prejudice pursuant
6 to Federal Rule of Civil Procedure 12(b)(3).

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8 DATED this 7th day of July, 2020.
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11 Robert S. Lasnik
12 United States District Judge
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